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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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11 DERRICK NATHANIEL,

No. C 04-5082 MMC

12 Plaintiff,

13 v.

14 NEW UNITED MOTOR MANUFACTURING,  
INC., et al.,

**ORDER DENYING REQUEST TO  
ENTER PROPOSED JUDGMENT  
SUBMITTED BY DEFENDANT NEW  
UNITED MOTOR MANUFACTURING,  
INC.**

15 Defendants  
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18 Before the Court is a proposed judgment, submitted March 10, 2006 by defendant  
19 New United Motor Manufacturing Inc. ("NUMMI"), by which NUMMI requests an award of  
20 costs in its favor. On March 14, 2006, plaintiff Derrick Nathaniel filed an objection to the  
21 proposed judgment. Having reviewed the proposed judgment, plaintiff's objection thereto,  
22 and all other relevant documents on file in this matter, the Court rules as follows.

23 On October 27, 2004, plaintiff filed his complaint, containing seven causes of action,  
24 against five defendants. On June 9, 2005, the Court, upon stipulation of the parties,  
25 dismissed three causes of action with prejudice as to all defendants, and dismissed all  
26 remaining claims against all defendants other than NUMMI. On March 2, 2006, plaintiff  
27 filed a request for dismissal of the entire action without prejudice, to which NUMMI  
28 responded by filing a statement indicating its non-opposition to dismissal of the remaining


1 claims without prejudice and noting that certain defendants and claims had previously been  
2 dismissed with prejudice; NUMMI did not request an award of costs as a term or condition  
3 of such dismissal. On March 3, 2006, the Court granted plaintiff's request for dismissal.  
4 Thereafter, on March 3, 2006, the Clerk of the Court closed the case.

5 Where a district court dismisses an action upon a plaintiff's motion, the dismissal  
6 shall be entered "upon such terms and conditions as the court deems proper." See Fed. R.  
7 Civ. P. 41(a)(2). Before imposing any such term or condition, however, the court must  
8 notify the plaintiff of its intent to do so, see Lau v. Glendora Unified Sch. Dist., 792 F. 2d  
9 929, 930-31 (9th Cir. 1986), thus "grant[ing] to the plaintiff the option to refuse the voluntary  
10 dismissal if the conditions imposed are too onerous," id. at 930 (reversing order imposing  
11 condition on dismissal, where district court did not give plaintiff prior notice of its intent to  
12 impose condition so as to afford plaintiff opportunity to withdraw motion to dismiss).

13 Here, NUMMI, in its response to plaintiff's request for dismissal, did not seek an  
14 order, or in any way even suggest, that the Court condition entry of dismissal on an award  
15 of costs. Rather, NUMMI waited until after the dismissal was entered to seek imposition of  
16 such condition. Under the circumstances, NUMMI's request for an award of costs as a  
17 condition of dismissal is untimely, and, accordingly, NUMMI's request for a judgment  
18 awarding costs is hereby DENIED.

19 **IT IS SO ORDERED.**

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21 Dated: March 27, 2006

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23 MAXINE M. CHESNEY  
24 United States District Judge  
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